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Emily B Caudill REGULATIONS COMPILER

1 FINANCE AND ADMINISTRATION CABINET

2 Department of Revenue

3 (Amendment)

4 103 KAR 31:090. Tax-paid purchases resold.

5 RELATES TO: KRS 139.010, 139.200, 139.290, KRS 139.310

6 STATUTORY AUTHORITY: KRS 131.130[(4)]

7 NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(1) authorizes the
8 Department of Revenue to promulgate administrative regulations for the administration and
9 enforcement of Kentucky tax laws. This administrative regulation interprets [To interpret-]the
10 sales and use tax law as it applies to tax-paid purchases resold.

11 Section 1. Definition. "Tax-paid purchases resold" means a sales and use tax deduction taken
12 by a retailer on the sales tax return in the amount of the purchase price of property where the
13 retailer:

14 (1) Sells the property before making any use thereof, other than retention, demonstration, or
15 display while holding it for sale in the regular course of business;

16 (2) Reports the sale and remits applicable sales and use tax on the sales price of the property;
17 and

18 (3) Has previously paid the Kentucky sales or use tax on the purchase price of the property. [A
19 retailer who resells tangible personal property before making any use thereof (other than retention,
20 demonstration, display while holding it for sale in the regular course of business) may take a
21 deduction of the purchase price of the property if, with respect to its purchase, he has re-

1 ~~imbursed his vendor for the sales tax or has paid the use tax. If such a deduction is taken by the~~
2 ~~retailer, no refund or credit will be allowed to his vendor with respect to the sale of the property.]~~

3 Section 2. The tax-paid purchases resold deduction ~~[procedure]~~ described in Section 1 of this
4 administrative regulation may ~~[should]~~ be used in any of the following circumstances:

5 (1) The retailer, when making the purchase, intends to use the property rather than resell it but
6 later resells it before making any use thereof; ~~[-]~~

7 (2) The particular property is not of a kind ~~[not]~~ ordinarily sold or stocked by the retailer and
8 not customarily covered by resale certificates given to their vendors; ~~[his vendors and is the subject~~
9 ~~of an unusual sale, such as a sale for the accommodation of a customer, employee, etc.]~~

10 (3) The particular property is generally for the use of the retailer, but a small portion is
11 incidentally resold; or ~~[-]~~

12 (4) Through error, sales ~~[tax reimbursement]~~ or use tax is paid by the retailer with respect to
13 the purchase price of property purchased for resale in the regular course of business.

103 KAR 31:090

APPROVED BY AGENCY:

Daniel Bork
DANIEL P. BORK, COMMISSIONER
Department of Revenue
Finance and Administration Cabinet

Oct 10, 2019
Date

PUBLIC HEARING AND PUBLIC COMMENT PERIOD

A public hearing on this administrative regulation shall be held on December 27, 2019, at 10:00 a.m. in Room 9B, State Office Building, 501 High Street, Frankfort, KY 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through December 31, 2019. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Lisa Swiger, Tax Policy Research Consultant II, Department of Revenue, 501 High Street, Station 1, Frankfort, Kentucky, 40601, (502) 564-9526 (telephone), (502) 564-3875(fax), Lisa.Swiger@ky.gov (email).

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Regulation No. 103 KAR 31:090

Contact Person: Lisa Swiger
Phone Number: (502) 564-9526
Email: Lisa.Swiger@ky.gov

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation interprets the sales and use tax law as it applies to tax-paid purchases resold.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide up to date guidance on the tax treatment of tax-paid purchases resold deductions.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The proposed amendment updates regulatory language to conform with KRS 131.130.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The proposed amendment updates regulatory language to clarify information currently contained in the regulation.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendment will change this existing administrative regulation by adding statutory references to the "RELATES TO" section, adding an authorizing statement, defining tax-paid purchases resold, and updating the language within the body of the regulation based upon KRS 13A.

(b) The necessity of the amendment to this administrative regulation: See (1)(b).

(c) How the amendment conforms to the content of the authorizing statutes: See (1)(c).

(d) How the amendment will assist in the effective administration of the statutes: See (1)(d).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All retailers doing business in Kentucky.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No actions are necessary to comply with the amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no cost to comply with the amended regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Anyone who accesses the amended regulation will benefit from the updated information contained therein.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: There is no expected cost to implement the proposed amendment. Current staff and budgeted department funding will absorb the implementation of this administrative regulation.

(b) On a continuing basis: There is no cost expected on a continual basis.

(6) What is the source of the funding to be used for the implementation and enforcement

of this administrative regulation: Current departmental staff and funding will be used to implement and enforce this proposed amendment.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No additional funding or increase in fees is needed.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees are directly or indirectly established or increased by the proposed amendment.

(9) TIERING: Is tiering applied? (Explain why or why not): Tiering is not applicable as the proposed amended regulation will be applied equally to all entities impacted by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation No. 103 KAR 31:090

Contact Person: Lisa Swiger
Phone Number: (502) 564-9526
Email: Lisa.Swiger@ky.gov

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Finance and Administration Cabinet, Department of Revenue.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 131.130.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenues are expected to be generated by updating this administrative regulation.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

(c) How much will it cost to administer this program for the first year? No additional costs will be incurred by the department in the first year of this regulation being in effect.

(d) How much will it cost to administer this program for subsequent years? No additional costs will be incurred in subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: